

# OPEN PUBLIC MEETINGS AND PUBLIC RECORDS LAWS

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In 1971, following the positive vote on the statewide initiative addressing open public meetings, the legislature adopted the Open Public Meetings Act. The Act, along with the Public Disclosure Act, addressed requirements for state and local governmental units to conduct open public meetings and to provide public access to their records. The Public Disclosure Commission is responsible for providing information about the RCW's as well as ensuring compliance. This chapter focuses on the laws that impact library board meetings and access to library records. Many general questions can be answered by consulting the in-depth resource *Open Records and Open Meetings Deskbook* that cites the laws and subsequent legal interpretations. The following section was adapted from the *Deskbook* which is located on the Internet Website of the Office of the Washington State Attorney General <http://www.wa.gov/ago>. Specific questions should be addressed to the library legal counsel.

The following opening statement of the initiative and the RCW text demonstrates the clear intent of the law and the manner in which courts have interpreted the law:

***The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*** RCW 42.17.251

## OPEN PUBLIC MEETINGS

### Board Meetings Must be Public with Some Few Exceptions

A meeting is defined as any meeting at which action is taken. A board may not take any action except at a regular or a special meeting that has been announced following the provisions of the RCW. Board members may travel together or gather for purposes other than a regular or special meeting so long as no action is taken.

"Action" is defined as transaction of official business including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.

"Final action" is defined as a collective positive or negative decision, or an actual vote by a majority of the members of the board upon a motion, proposal, resolution, order, or ordinance.

A meeting occurs whenever there is action, including discussion, deliberation or evaluation that may lead to a final decision.

Standing committees of the board that routinely deal with particular issues, such as a budget committee that meets to determine fiscal priorities and then reports back to the library board, must meet the public meetings criteria.

It is generally agreed that an agency may conduct its meeting where one of the members of the governing body attends by telephone and a speaker phone is available at the official location of the meeting so as to afford the public the opportunity to hear the member's input. This should occur only when a member is unable to travel to the meeting site and would not include "telephone trees" where the members repeatedly call each other to form a majority decision.

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## **Board Minutes**

Library boards must maintain accurate minutes of their meetings and make them available upon request. The law does not specify format or content, but minutes should at least record significant votes and actions.

## **Exceptions to Public Meetings - Executive Sessions**

A library board may hold an executive session solely for an announced purpose or it may call an executive session during a regular or special meeting.

Before convening in executive session, the presiding officer shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a later time by announcement of the presiding officer. If the session ends earlier than expected, the regular meeting may not be resumed until the announced time.

People other than members of the board may be invited to attend if they have some relationship to the matter being addressed, or if they can provide assistance. For example, the library director may present information.

## **Minutes of an Executive Session**

Minutes are not required to be taken at an executive session.

## **Sole Subjects that May be Considered in Executive Session**

Executive sessions may not be called in order to avoid public discussion of “hot” topics. Topics that may be addressed in an executive session are precisely defined and are listed below.

### Real Estate

To consider site selection or the acquisition of real estate by lease or purchase when public knowledge would likely result in an increased price.

To consider the minimum price at which real estate will be offered for sale or lease when public knowledge would likely result in a decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public.

### Publicly bid contracts

To review negotiations on the performance of publicly bid contracts when public knowledge would likely result in increased costs.

### Personnel

To receive and evaluate complaints or charges brought against a trustee or employee. Note: the trustee or employee can request that a public hearing or a meeting open to the public be conducted upon such complaint or charge.

To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, those actions shall be taken in an open public meeting.

Discussion of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in an open public meeting.

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### Litigation

To discuss with library legal counsel litigation or potential litigation to which the library board, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the library.

### **Collective Bargaining Sessions are Excluded from Public Meeting Requirements**

Collective bargaining sessions with employee organizations, including the following are not required to be held in public meetings:

- Contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement.
- The portion of a meeting during which the board is planning or adopting the strategy or position to be taken by the board during the course of any collective bargaining, professional negotiations.
- Grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

### **Votes Must be Public**

Board members may not vote by secret ballot. A secret ballot is null and void.

### **Who May Attend Public Meetings**

Any member of the public may attend board meetings. The board may not require people to sign in, complete questionnaires, or establish other conditions to attendance. For instance, a board could not limit attendance to people who live in the library district or city.

The act does not address whether a board is required to hold its meeting at a location that would permit every person to attend. However, deliberately scheduling a meeting at a location that was too small to permit full attendance would not meet the spirit of the law.

### **Disorderly Conduct**

If a meeting is interrupted by a group or groups of persons so severely that the meeting can not be conducted in an orderly fashion, or order cannot be restored by removing the individuals who are interrupting the meeting, the board may order the meeting room cleared and continue in session. Or, the board may adjourn the meeting and reconvene at another location selected by majority vote of the members.

In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session.

The board may establish a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

### **Public Recording of a Board Meeting**

Although the Act does not specifically address whether the public may make an audio or video recording of a meeting, there is general agreement that recording is permitted if it is not disruptive.

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## **Library Board Must Establish a Schedule of Regular Meetings**

The board must set a time for regular meetings by resolution, in its bylaws, or other rule. For example, the third Friday of the month. If the regular meeting falls on a holiday the meeting shall be held on the next business day. The library is only required to notify the public of the time and place that it will hold its regular meetings, although other laws may require additional notice or an agenda.

## **Meeting Place**

The board does not need to meet within the geographic boundaries of the jurisdiction of the library unless local laws establish such a requirement.

## **Notice of Each Special Meeting**

A special meeting may be called at any time by the presiding officer or by a majority of the members of the board by hand delivering or by mailing written notice to each member of the board at least 24 hours prior to the meeting time.

The media may file a written request to be notified of a particular special meeting or all special meetings. These on-file requests should be periodically reviewed to assure that appropriate notice is given.

The notice must specify the time and place of the meeting and the business to be transacted. Final disposition cannot be taken on any other matter at a special meeting.

If a member files a written waiver of notice, or a telegram waiving notice with the secretary of the board, then written notice may be dispensed with. A member who is present at the meeting when it convenes does not need to file a notice waiver.

## **No Notice is Required for Emergency Meetings**

An emergency is defined as a natural disaster, such as fire, flood or earthquake that requires immediate attention and expedited action. An unexpected deadline or event is not an emergency though the board may call a special meeting to discuss the issue.

The emergency meeting may be held at a site other than the regularly scheduled meeting place, and notice requirements are suspended during the emergency.

## **Civil Penalties**

Every trustee who attends a board meeting that is in violation of the open public meetings laws, with knowledge that the meeting is in violation, is subject to personal liability for a civil penalty of \$100. The penalty shall be assessed by a judge of the Superior Court. Anyone may initiate the action.

A person who prevails in the courts for violation may be awarded all costs, including reasonable attorney fees incurred in connection with the legal action.

A library board that prevails in the courts for violation may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

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## PUBLIC RECORDS

***Public record includes any writing containing information relating to the conduct of government... regardless of physical form or characteristics.***

RCW 42.17.020(36)

***Courts shall take into account the policy... that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.***

RCW 42.17.340(1), (2) and (3)

The law specifically exempts ***Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.***

RCW 42.17.310(1)(I)

(The following section is adapted from the *Open Records and Open Meetings Deskbook* which is located on the Internet Website of the Office of the Washington State Attorney General <http://www.ago.gov>.)

### **Request by Police or Other Authorities for Access to Library Circulation Records**

As noted above, library circulation records are exempt from inspection or copying without due process. The process that police or others may initiate is:

- They may file a motion with the superior court in the county in which a record is maintained requiring the library to show cause why it refused to allow inspection or copying of a specific record or class of records.
- The Superior Court must hold a hearing with notice to every person of interest and the library. After the hearing, the court may permit inspection or copying if it is found that the exemption is clearly unnecessary to protect the individual's right of privacy or any vital government function.
- The third party to whom the library record pertains may seek injunctive relief to enjoin disclosure of the record. The action may be filed in the Superior Court where the person resides or where the record is maintained. The library may notify persons named in a record, or to whom a record pertains, that the record is subject to a pending record request under the Act.
- A search warrant is not sufficient because it does not provide for the Superior Court hearing process with notice to persons of interest and the library.

Note: RCW 42.17.310(1)(I) is an exemption, not a prohibition, from disclosure; therefore, to the extent that no person's right to privacy would be invaded by disclosure of the information contained in a record, an agency may waive an exemption if it chooses to do so.

Statistical information, based on library records, is not exempted if it does not readily identify a person.

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## **Inspecting or Copying Library Records Other than Circulation Records**

Policies, reports, budgets, minutes, and other records of a library must be made accessible to the public. Libraries should incorporate the following topics into policy and procedures to assure that the intent of the law is followed.

### Procedures for Making a Request

Any person may request to inspect and copy a library record. The library may not ask the purpose of the request.

### No Particular Form of Request is Required

No particular form of request is required by the Act. Although a library is allowed to make reasonable rules for providing records, the rules shall provide for the "fullest assistance to inquirers" and for the "most timely action" in response to requests.

The Act specifically allows for people to submit requests by mail. Written requests may be advisable because this confirms the date when the record was requested, when the library received the request, and it also clarifies what is being requested. Written identification of the requesting party, with address and telephone number, will also help the library clarify an ambiguous request.

### Response in Five Days

The library must respond to a public records request within five business days of receipt. A request for voluminous records still requires a response even though the actual production of the records may take longer.

#### A response is defined as:

- Producing the record.
- Acknowledging the request with a reasonable estimate of the time that it will take to respond.
- Denying the request.

#### If the response will take longer than five days it must be based on:

- The need to clarify a request.
- Additional time necessary to locate and respond to the request.
- The need to contact a third party or agency affected.
- Additional time necessary to determine whether certain information is covered by an exemption and should not be disclosed in whole or in part.

A requestor who believes that the time estimate made by the library is not reasonable may request the Superior Court in the county in which the record is maintained to require the library to show that the estimate is reasonable. The burden of proof is upon the library.

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A person who prevails in a court action seeking the right to inspect or copy a public record, or the right to receive a response to a public record request within a reasonable amount of time, shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, the court may award an amount of not less than five dollars and not to exceed one hundred dollars for each day that the person was denied the right to inspect or copy the public record.

### **Identifiable Public Records**

The library is required to respond to a request for "identifiable public records." A library is not required under the Act to respond to questions or to furnish information that is not the subject of an identifiable public record.

The requirement that a record be "identifiable" means that the requestor does not need to know the specific name of a record, but can request documents that relate to a topic. The library must "provide for the fullest assistance to inquirers," which may include helping the requestor to clarify the desired documents.

### **Indexes Identifying Records Must be Available to the Public**

RCW 42.17.260(3) requires an agency to provide an index to its records issued after January 1, 1973, or to publish a formal order explaining why it is unduly burdensome or would interfere with operations. It must then make available indexes that the agency uses internally. According to the *Revised Code of Washington*, the following categories of records that must be available to the public include:

- (a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;
- (c) Administrative staff manuals and instructions to staff that affect a member of the public;
- (d) Planning policies and goals, and interim and final planning decisions;
- (e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and
- (f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

### **Some Exempt Categories of Agency Records**

Residential addresses, telephone numbers of employees or volunteers.

All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

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Information in employee files evaluating public job performance, unless there is misconduct.

Investigative records compiled while conducting a current investigation of a possible unfair practice or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended. However once a record is cited by the library in an action it is not exempt.

### **Fees Related to Public Records**

A library may not charge a fee to a person for inspecting public records. Nor can the library impose a fee for locating public documents and making them available for copying.

A reasonable fee may be charged for making copies and for the use of library equipment. The fee may not exceed actual costs directly related to the copying. Direct staff time to copy the requested public records may be included in a library's costs as well as the cost of paper, toner, cost of the per-page use of equipment, and the cost of shipping or mailing including postage and the envelope or containers. Administrative or overhead costs may not be included unless they are directly attributable.

The library must make available to the public a statement of the photocopy costs, and the manner in which the actual per-page cost was determined.

If the library has not established a per-page cost, it may not charge more than fifteen cents per page for photocopies of public records or for the use of library equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requester.

### **Duty To Delete or Redact Exempt Material**

Libraries must respond to requests for public records even if a portion of the document contains information covered by an exemption. The library must delete or black out specific information covered by an exemption and disclose the rest of the document.

Information should be removed only if it violates personal privacy or a vital government interest. "Personal privacy" information has been defined as highly offensive to a reasonable person, and of no legitimate public concern.

### **Good Faith Response**

A good faith response in releasing a public record absolves the library, its trustees or staff from liability arising from the disclosure.

### **RESOURCES**

Public Disclosure Commission  
P.O. Box 40908  
Olympia, WA 98504-0908  
1-877-601-2828  
<http://www.pdc.wa.gov>

Attorney General. *Open Records and Open Public Meetings Deskbook*  
<http://www.wa.gov/ago>